


B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)		
PLAINTIFFS Darra Van Cleveland	DEFENDANTS Educational Credit Management Corp., ECMC-CA Deutsche Bank ELT Navient & SLM Trusts JP Morgan Chase Bank, N.A.; Citibank ELT Student Loan Corp.; Wells Fargo ELT Navient Stu Ln Trst; U.S. Dept. of ED.			
ATTORNEYS (Firm Name, Address, and Telephone No.) Law Office of Christine A. Kingston 5011 Argosy Avenue, Suite 3 Huntington Beach, CA 92649 Tel: 714-533-9210	ATTORNEYS (If Known)			
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee			
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)				
Determination that Student loans are discharged 11 USC 523(a)(8)				
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div> </td> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input checked="" type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) </td> </tr> </table>			FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div>	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input checked="" type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23			
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$			
Other Relief Sought				

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Darra Van Cleveland		BANKRUPTCY CASE NO. 2:13-bk-32201-ER
DISTRICT IN WHICH CASE IS PENDING CENTRAL	DIVISION OFFICE LOS ANGELES	NAME OF JUDGE ERNEST ROBLES
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE 2/22/17	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Christine A. Kingston	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

Law Office of Christine A. Kingston
Christine A. Kingston, State Bar No. 256503
5011 Argosy Avenue, Suite 3
Huntington Beach, CA 92649
Tel: 714-533-9210
Fax: 714-489-8150
Attorneys for Debtors

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT CALIFORNIA
LOS ANGELES DIVISION**

In re)	Case No.: 2:13-bk-32201-ER
)	
Darra Cleveland,)	Chapter 7
Debtor)	
)	Adv No.
)	
)	
Darra Cleveland,)	
Plaintiff)	COMPLAINT FOR:
)	DETERMINATION THAT STUDENT
vs.)	LOAN DEBT IS DISCHARGEABLE
)	PURSUANT TO 11 U.S.C. §523(a)(8)
Educational Credit Management Corp.,)	
ECMC-CA)	
Deutsche Bank ELT Navient & SLM Trusts)	
JP Morgan Chase Bank, N.A.; Citibank ELT)	
Student Loan Corp.; Wells Fargo ELT Navient)	
Stu Ln Trst; U.S. Dept. of ED.)	
Defendants.)	

Plaintiff/Debtor, Darra Cleveland alleges:

JURISDICTION

1. This Court has jurisdiction under 11 U.S.C. §523. Pursuant to LBR 7008, Plaintiff states that this adversary proceeding is a core proceeding pursuant to 28 U.S.C. §§157, 1334, and arising under Chapter 7 of the Bankruptcy Code, case No. 8:16-bk-13542-ES. Venue is proper as the underlying bankruptcy case is now pending before this Court.

///

FIRST CLAIM FOR RELIEF

(Determination that Student Loan Debt is Dischargeable pursuant to 11 U.S.C. §523(a)(8))

2. On or about 2002, Darra Cleveland's then wife, had deposited fraudulent checks into Mr. Cleveland's bank account, without his knowledge or consent. This led to his arrest and being charged with several felony counts, which were later dismissed after his wife confessed.

3. Unfortunately, this incident, even with four felony counts against him dismissed and the fifth count acquitted, he lost his 13-year career as a first responder with the U.S. Forest Service, as a seasonal firefighter, ending as a Fire Fighter Specialist/Engineer, Paramedic and Fire Inspector with the Los Angeles County Fire Department.

4. The Debtor cannot maintain, based upon current income and expenses, a 'minimal' standard of living for himself and his dependents if forced to repay the loans. The Debtor's Schedules I and J reflect a monthly net income of \$0.00 per month.

5. The unfortunate incident from 2002, has left Mr. Cleveland with limited employment opportunities, so it was during the years from 2005-2009 that he attended college and obtained a Bachelor degree in Urban Studies. This proved to be unsuccessful for employment opportunities.

6. The events leading up to his 2013 bankruptcy case stemmed from his inability to obtain employment sufficient to sustain a minimal standard of living and during the year 2010, Mr. Cleveland's residence became a tractor trailer rig he used while employed as a truck driver.

7. Although his schedule J reflected an inclusion of his then student loan expenses, his circumstances have changed. In 2015, he received informal custodial guardianship of this two grandchildren, which became a legal guardianship in 2016. Thus, he now has two additional dependents to support financially.

8. Additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans. Debtor's Undue Hardship lies in the fact that Mr. Cleveland lost his career due to his ex-wife's criminal activities, and has been unable to bounce back financially.

9. Plaintiff himself is his sole and primary source of income, with his two grandchildren as dependents.

10. The Plaintiff has made a good faith effort to repay the loans. His continued good standing has been through ongoing applications for forbearance and deferment of payments for his loans.

PRAYER

WHEREFORE, PLAINTIFF prays as follows:

A. A declaration that the student loan debt, in its entirety and from all Creditors is discharged pursuant to §523(a)(8);

B. Reasonable attorneys' fees and costs incurred by bringing this action; and

C. Other such and further relief as deemed appropriate by this Court as just and proper.

DATED: February 18, 2017

Law Office of Christine A. Kingston

By: /s/Christine A. Kingston

Counsel for Plaintiff/Debtor